O/J.P.C. /49

1949.

File No. G-5/49

Legal / Department

G **BRANCH**

K

Subject:— Opinions under the Judicial Penal Code. 1949

P.6/E

File No. O/J.P.C./49

Gen. 194 e.

C O N T E N T S.

(Legal Department File No.O)/I.P.C./49.

Sr. No.	R.I./C.No.	Subject.	Pages.
		Opinions under the Indian Penal Code.	
1.	G/82 26-1-49.	Sections 18 and 415. Whether Mr. K.B. Godse has committed offences against the Indian Penal Code or against any control Orders regarding Oil engines by using the engine for installation of a Telke house instead of using it for agricultrual purposes as required by the essentiality certificate. (p. 1-' not copied)	1-4
2.	G/247 5-4-1949. G/705 27-12-1949.	Whether there is a prima facie case against S/s. Narayancas Varicheran and its held clerk for changing the figures on the Release Order and for transporting to coir mill made chogh without a valid transport permit.	5-10.
3.	G/67 20/9/1949.	Whether any action can be taken against Mr. K. . Shetty, the proprietor of the Hindu Arogya Bhavan, for attempting to exchange an old milk powder tin for new one b declaring that it was issued on 30/4/49. When it was really issued a long time back and this attempting to cheat Govt.	11-12
4.	G/593 21/9/1949. G/677 2/12/1949	Whether it would be legally tenable to prosecute Mr. Shah for cheating Government by supplying short weights in hey bales. (copies not made)	13-20

SSD.
30.7.56. 83.

Office of the R. L. A.

The only feature which distinguishes this ca from that of Mr. Manibhai Patel, which was the subject matter of R.L.A.'s opinion No. 544-Confl. dated the 8th October 1948, in that in this case it seems that the essentiality certificate was not necessary for the purpose of securing the engine. However, the fact remains that Mr. Godse believed that such certificate was necessary and that, on the assumption that he made a representation to the Agricultural Engineer similar in substance to what he made to the Department, he did give information which he knew or believed to be false. If we can prove that from the very inception it wa his idea to use the engine for a talkie, we can bring his case under section 182. The certificate would still be property in his eye although, objectively viewed, it may not be property. The case would, therefore, fall also under Section 415

In any case, this appears to be a gross instance of misuse of the engine and I feel that the case should be taken to a court of law on the above charges.

O.C.

Id/- .....
26/1

Remembrancer of Legal Affairs.

U.O.R. to A. & R.D.D. No. G/89, dated 26/ 1/ 49.

SSD.
30.7.56. 4c.

Office of the R. L. A.

The case against M/s. Narayandas Haricharan is that

i) they changed the figure and word '1 one' to '12 twelve' on the Rele se Order No. M.J. 310 which they submitted to the Provincial Textile Controller along with their application for movement permit; and

ii) they transported 32 bales of mill made cloth and 36 bales of Hyderi Mission Cloth against a permit which was issued for transport of 68 bales of Hyderi Mission Cloth.

As regards the second offence there is a pima facie case against M/s. Narayandas Haricharan and its head clerk for prosection for breach of the Movement Control Order as the mill made cloth which they transported to Poona was not covered with a valid transport permit;

2. As regards the first offence, the grounds in favour of presecution are :

1) that only the firm and none else were interested in making the alteration; and

2) the handwriting expert's opinion is perhaps not helpful because the specimen handwriting which was sent to him may have been dissimulated. However there is chose similarity in the handwriting of the head clerk and that of the alterations on the Release Orde and the ink used also appears to be the same ;

3) the Head clerk has tried to explain the difference in the number of bales mentioned in the application for movement permit and in the total of the Release Orders produced by saying that he failed to mention 3 Release Orders.

3. As against this (1) there are the statements of M/s. Shasane and Gore saying that so far as they remember the changes of 9to 19 and 9to 20 were not there when they first saw the Release Order and

2) the fact stressed by the Police Prosecuter that the alterations were badly done and one who wanted to get mere goods released would not make such alteration as are apparently patent.

As the firm and the Head clerk will be prosecuted for second offence, they may be prosecuted for the first offence also and if necessary the Police may verify whether the handwriting on the exhibits pagesxxixxxxxixxxfxfilexIx(PxT2Cx)xxxdxthex exhibitxxpagesxxxxtxpgs at page 37 of file II (P.T.C.) and the exhibits pages 11 and 13 of file I (P.T.C.) which appear to be the acknowledged speciments of the handwriting of the head clerk are really so and then send these exhibits along with alterations to the handwriting expert for opinion.

O.c.

Id/- .....

1/4

Remembrancer of Legal Affairs.

U.O.R. to the P.T.C./VII, No. G/247 dated 2/4/ 1949.

S' D.
30.7.56. 4c.

Office of the R. L.A.

In view of the Hand-writing Expert's opinio and in view of the two points stated in the last but one para of R.L.A's opinion No. G-247, dated 2-4-49, the prosecution for the first offence, viz., forgery is not likely to succeed. Prosecution may, therefore, be confined to the second offence, viz., breach of the Movement Control Order.

O.C.

Id/- .....

27/12

Remembrancer of Legal Affairs.

U.B. to P.T.C. No. G-705, dated 27th December '4

SCD.
30.7.56. 4c.

Office of the R. L. A.

It is not clear from the papers whether a panchnama of the Skim Milk Powder which Mr. K. B. Shetty attempted to get exchanged was made and whether the powder with the tin containing it has been seized or not. The Skim Milk Permit holder Mr. K. M. Shetty did not go personally to get it exchanged but he had sent his brother-in-law who has given it in writing that the powder was issued on 30th April 1949 when in fact it was such older. But there is nothing to show that he was telling this lie under instructions of his brother-in-law. Besides there were not written orders from the Department Regulating exchange of old powder for fresh powder and although the permit holder would have been benefited if his brother-in-law had succeeded in getting old powder exchanged for new, it would not be possible to prove that he had asked his brother-in-law to say what he did say. Prosecution for cheating by the permit holder is not likely to succeed.

As regards the proposed departmental action of suspending the permit, the authority issuing a permit under Government Notification, Finance Department (Supply) No. 57(G)/IV-C (a) dated 15th November 1945 has the implied power to refuse to issue or to cancel, or suspend it. But considering the fact that there is hardly any case against Mr. K.M. Shetty, the case does not appear to be a fit one for taking departmental action. At the most a warning may be given.

O.C. Id/- .....

18/9

U.R. to M.C. No. 587, dated the 20th September 194

SSD.
30.7.56. 4c.